United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

B
P of S

74-1169

United States Court of Appeals
FOR THE SECOND CIRCUIT

ATAKA & CO., LTD.,
Plaintiff-Appellant and Cross Appellee,

against

DERRICK BARGE HOWLETT NO. 18, its engines, boilers, etc., M.P. HOWLETT INC., and EDWARD WITHAM,
Defendants and Third-party Plaintiffs-Appellees and Cross-Appellants,

against

ISTHMIAN LINES, INC., STATES MARINE-ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC., and INTERNATIONAL CARGO GEAR BUREAU, INC.,
Third-party Defendants,

and

THE HOME INSURANCE COMPANY,
Third-party Defendant and Fourth-party Plaintiff,

against

FIREMAN'S FUND INSURANCE COMPANY,
Fourth-party Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
JUN 10 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN,
Attorneys for Plaintiff-Appellant and Cross-Appellee
96 Fulton Street
New York, New York 10038

THACHER, PROFFITT & WOOD,
Attorneys for Defendants and Third-party Plaintiffs-Appellees and Cross-Appellants,
40 Wall Street
New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

INDEX

Page

Docket Entries.............................. A1

Motion for Summary Judgment.................... A5

Affidavit of Martin B. Mulroy in Support of Motion.............................. A8

Exhibit A--Invoice No. 3-1829 Dated 3-31-70.................... A14

Exhibit B--Dock Receipt.................... A21

Exhibit C--Memorandum of Agreement............ A23

Exhibit D--Certificate of Inspection and Communications A25

Exhibit E--Statement of Crane Operator Witham.......................... A28

Exhibit F--Bill of Lading.................... A35

Affidavit of Raymond S. Jackson, Jr. in Opposition to Motion.......................... A37

Opinion of Duffy, U.S.D.J.......................... A43

Judgment.............................. A53

Notice of Appeal.............................. A56

Notice of Cross-Appeal.............................. A58

DOCKET ENTRIES

79686
HBM(1)

JUDGE DUFFY

CIVIL DOCKET
UNITED STATES DISTRICT COURT

IN ADMIRALTY

Jury demand date:

71 CIV. 1503

D. C. Form No. 106 Rev.

TITLE OF CASE

ATAKA & CO., LTD.,

Plaintiff,

v.

(DISMISSED-1-15-74)

DERRICK BARGE HOULETT NO. 18, its engines, boilers, etc., M. P. HOULETT INC., and EDWARD WITHAM, (DISM-1-15-74)

Defendant and Third-Party Plaintiff,

v.

ISTHMAIN LINES, INC., STATES MARINE-ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC., and INTERNATIONAL CARGO GEAR BUREAU, INC.,

Third-Party Defendants,

and

THE HOME INSURANCE COMPANY,

Third-Party Defendant and Fourth Party Plaintiff,

v.

FIREMAN'S FUND INSURANCE COMPANY,

Fourth-Party Defendant.

ATTORNEYS

For plaintiff:
~~HILL,RIVKINS,WARBURTON,McGOWAN & CAREY.~~
~~96 Fulton St.~~
~~N.Y.C. N.Y. 10038~~
HILL,RIVKINS CAREY LOESBERG & O'BRIEN
96 FULTON ST NYC 10038 (BE 3-6171)

For defendant: (4th Party Deft & Defts)
Thacher, Proffitt, & Wood
40 Wall St. NY 10005 269-5100

Kirlin Campbell & Keating
(for Isthmian Lines, Inc., States Marine-Isthmian, etal) 120 Broadway NY 10005

Hill, Betts & Nash (3rd.pty.deft. Maher Stevedoring)
~~26 B'way, N.Y. 10004~~
One World Trade Center

Daniel J. Coughlin
110 William St. New York, N.Y. 10038
BE 3-5010 (3rd.pty.deft. Inter'l Cargo Gear Bureau)

BIGHAM, ENGLAR, JONES & HOUSTON
99 John Street
attys for 3rd pty deft (Home Ins. Co.)
New York, N.Y. 10038

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk			4-2-71	Hill R	15 —	
				4-2-71	US Treas		15 —
				1/3/74	Hill R	5 —	5 —
J.S. 6 mailed	Marshal			1/3/74	Treas		
				1/23/74	Thacher	5 —	
Basis of Action:	Docket fee			1/23/74	Treas		5 —
DAMAGE TO MACHINERY							
$20,000.00	Witness fees						
Action arose at:	Depositions						

A 1

Docket Entries

A'A[illegible] & CO. LTD. VS. DERRICK BARGE HOWLETT NO. 18 etc. ET ANO

to: M.B.M.

71 C[illegible] 150

JUDGE DUFFY

DATE	PROCEEDINGS	Date Order or Judgment Note
Apr. 2-71	Filed Complaint. ISSUED SUMMONS	
May 12-71	Filed summons with marshal's ret. Served M.P. Howlett Inc. by Mr. Thomas Keogh on 4-21-71	
Aug.18-71	Issued additional summons.	
Aug.30-71	Filed Defendant's Designation of Trial Counsel.	
Aug.30-71	Filed Summons with Marshal's ret. Served: Edward Witham, by personally on 8-23-71 (Additional Summons)	
Jan.25-72	Filed ANSWER of defendants to complaint.	TPPC[illegible]
Jan.31-72	Filed Notice of Examination before Trial.	
Mar 2/72	Filed Notice of Examination before trial.upon pltff Charles Lewis, Jr.	
Mar 2/72	Filed Notice of Examination before trial upon pltff E.H. Johanson of Internationa Cargo Gear Bureau.	XXX[illegible]
May 15-72	Filed Plaintiff's Note of Issue and Statement of Readiness.	
May 19-72	Filed stipulation cancelling the Note of Issue filed 5/15/72.	
Jun 19-72	Filed Notice of Deposition and Notice to Produce.	
Aug. 14-72	Filed order that deft's may bring into this action as third-pty. deft's as indicated by filing a third-pty.complaint. Frankel, J.	
Aug.21-72	Filed defts' Third-Party Complaint.	
Sep.1-72	Filed Notice of Appearance for deft. Isthmian Lines, Inc. States Marine-Isthmian, et al.	
Sep 14-72	Filed Summons and Entered Marshal's return served on: Isthmian Lines, Inc by R. Brezler on 8-23-72, States Marine Isthmian Agency, Inc. by R. Brezler on 8-23-72, Maher Stevedoring Co, Inc by Mr. Frank Adamo on 8-23-72, International Cargo Gear Bureau, Inc. by Mr. Fneglia on 8-23-72 & The Home Insurance Co. by Mr. Welsh on 8-29-72.	
Sept 15-72	Filed letter of Jack Tannerbaum address to Thacher, Proffitt, Prizer Crawley & Wood.	
Sep.3-72	Filed 3rd party defts [illegible] with counterclaim & cross-claim, & [illegible]. ISTHMIA[illegible]	[illegible] $K
Oct.3-72	Filed 3rd party defts ANSWER to complaint pursuant to Rule 14(c) ISTHMIAN LINES	[illegible] K.
Oct.3-72	Filed 3rd party deft International cargo gear bureau Inc., [illegible] ANSWER.	D.J.C.
Oct.6-72	Filed deft MAHER STEVEDORING COMPANY INC ANSWER to cross-Claim	H.D.R. N.
Oct.6-72	Filed deft MAHER STEVEDORING COMPANY INC ANSWER to 3rd party complaint with cross claim.	H.D.R. N.
Oct.13-72	Filed defts interrogatories.	
Oct.25-72	Filed defts & 3rd pty pltffs ANSWER to counter-claim.	T.P.P.C.W.
Oct.25-72	Filed defts & 3rd pty pltffs ANSWER to counter-claim.	T.P.P.C.W.
Nov. 8-72	Filed Stip & Order that the time the pltff must answer or object move in connection with interrogatories propounded to pltff by by defts ms extended to 2-12-73. So Ordered 10-30-72 FRANKEL, J.	
Nov10-72	Filed 3rd pty deft Home Insurance Co answer to 3rd pty complaint.	D.E.J. $H.
Nov.10-72	Filed Fourth pty complaint & issued summons.	
Dec.11-72	Filed 3rd party pltffs notice of deposition & notice to produce.	
Jan.3-73	Filed 4th Party Defts answer to the complaint.	T.P.P.C.W.
Jan.3-73	Filed Notice of Changeof Firm name. Thacher, Profitt, & Wood new name	
Feb.15-73	Filed Pltffs answers to interrogatories.	
Feb.21-73	Filed Stip & Order that the time for the defts to object to pltffs answer to interrog which were served by pltff on 2-14-73 is extended to 4-2-73. So Ordered 2-20-73 FRANKEL, J.	
Feb.22-73	Filed Interrogatories propounded to 3rd Party deft Maher stevedoring co Inc. by Defts.	
Aug 16-73	Filed pltff's motion for summary judgment pursuant to rule 56 Ret.9-4-73	
Aug 16-73	Filed pltff's memorandum in support of above motion	

(CONT'D TO PAGE 3)

Docket Entries

71 Civ. 1503 Ataka & Co. Ltd.-vs- Derrick Barge Howlett No. 18 etc, et al DUFFY, J.

-page 3-

JUDGE DUFFY

DATE	PROCEEDINGS
Sep. 12-73	Filed order granting adjournment of deft. and third-pty pltff. motion to 9-28-73. Duffy, J.
Sep. 28-73	Filed affdvt. of service by Rita O'Connor that she served answer and cross-complaint, as indicated.
Oct 9-73	Filed affdvt. and notice of motion bydefts. and third-party pltffs. for an order compelling third-party deft. to answer certain interrogs. Ret. 10-12-73.
Oct. 9-73	Filed affdvt. by Raymond S. Jackson, Jr. in opposition to pltff's motion for summary judgment against deft. derrick barge Howlett, Inc.
Oct. 9-73	Filed defts' memorandum in opposition to pltff's motion for summary judgment, or, alternatively, to strike defet' Cogsa defenses.
Oct. 17-73	Filed stip & order that defts' motion for an order compelling third-pty deft., Maher Stevedoring Co., Inc. to answer interrogs. ret. 10-12-73 is adjourned to 11-9-73. DUFFY, J.
Oct 26-73	FiledOrder that the time of the T/P defts, Isthmian Lines, Inc. and States MARINE ISTHMIAN AGENCY, INC. to answer cross claims etc. is extended to [illegible] Frankel, J.
Nov. 12-73	Filed ANSWER of third-pty deft. Maher Stevedoring Co., Inc. to cross-claim by third-pty deft. International Cargo Gear Bureau, Inc. [illegible]
Nov. 13-73	Filed memo endorsed on motion filed 10-9-73. The parties having consented to the relief requested, the motion is deemed withdrawn. DUFFY, J.
Nov. 13-73	Filed Order that third-pty deft. Maher Stevedoring Co, Inc. answer defts. interoggs. within 60-days from the date of this Order. DUFFY, J. mailed notices.
Nov. 12-73	Filed third-pty deft. Maher Stevedoring Co., Inc. Answer to cross-claim. [illegible]
Nov 28-73	Filed defts notice to take deposition of Todd Shipyards Corp. on 12/7/73. by the pltf
Nov. 29-73	Filed Opinion # 40063- the pltff. has moved for summary judgment or alternatively to strike defts' COGSA defenses. The pltff's motion to strike the COGSA defenses as to limitation of liability must therefore be denied. Having thus determined that liability must be limited, I now must determine whether the pltff. has proved liability and is therefore entitled to partial judgment on that question alone. The defts. were the last to have actual direct control over pltff's goods prior to the damage to them. Judgment will enter against them and thereafter they may pursue their third-pty claims. Settle order in accordance with this opinion on seven days notice. DUFFY, J. (m/n)
Jan. 15-74	Filed stipulation by each of the parties that the damages complained of by pltff. exceed $ 500.
Jan. 15-74	Filed partial summary Judgment $ 74,064- ordered that pltff's motion for summary judgment against defts. derrick barge Howlett No. 18 and M.P. Howlett, Inc. is granted; that pltff's motion to strike the first affirmative defense alleged in defts' answer is denied; that pltff. have judgment against derrick barge Howlett No. 18 and M.P. Howlett, Inc. jointly and severally, in the sum of $500. and that nothing contained in this order shall prejudice the prosecution by the third and fourth-party pltffs.of the third and fourth-party claims alleged herein and that the court retains jurisdiction over these claims. DUFFY, J. Judgment entered-1-15-74 Clerk Entered on docket 1-16-74 (m/n)
Jan. 21-74	Filed pltff's attys. notice of change of firm name.
Jan.22-74	Filed pltff's notice of appeal from the Judgment entered 1-15-74. Entered on docket 1-23-74. Mailed copy to: Thacher, Proffitt & wood, Esqs.
Jan.24-74 -	Filed defts. Derrick Barge Howlett No. 18 and M.P. Howlett, Inc. notice of cross appeal from judgment entered on 1-15-74. Mailed copies to: Hill, Rivkins, Carey, Loesberg & O'Brien- Kirlin, Campbell & Keating- Daniel J. Coughlin- Hill Betts & Nash- Bigham, Englar, Jones & Houston. Entered on docket -1-24-74

Docket Entries

(PAGE # 4)

DATE	PROCEEDINGS
r 1, 1974	Filed Pltff's Reply Memo in Support of Motion for Summary Judgment.
12-20-72	Filed Summons with Marshall returns.

MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

ATAKA & CO., LTD.,

Plaintiff,

-against-

DERRICK BARGE HOWLETT NO. 18, its engines, boilers, etc., M. P. HOWLETT INC., and EDWARD WITHAM,

Defendants and Third-Party Plaintiffs,

-against-

ISTHMIAN LINES, INC., STATES MARINE-ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC., and INTERNATIONAL CARGO GEAR BUREAU, INC.,

Third Party Defendants

-and-

THE HOME INSURANCE COMPANY,

Third Party Defendant and Fourth Party Plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Fourth Party Defendant.

- -x

Index No. 71 Civ.1503
(MEF)

MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56 F.R.C.P.

SIRS:

PLEASE TAKE NOTICE that upon the affidavit of MARTIN B. MULROY, sworn to the 15th day of August, 1973, and on all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a stated term thereof for the hearing of motions, to be held in the United States Courthouse, Foley Square, New York, New York, on the 4th day of September, 1973, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order granting summary judgment in favor of the plaintiff and against the defendants DERRICK BARGE HOWLETT No. 18 and M. P. HOWLETT INC., striking defendant's defense of the $500 per package limitation, and referring the matter to a Commissioner for amount of damages, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York

August 15, 1973

Yours, etc.,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for plaintiff
Office and P.O. Address
96 Fulton Street
New York, New York 10038

TO:

THATCHER, PROFFITT, PRIZER, CRAWLEY & WOOD, Esqs.
Attorneys for defendants
Office and P.O. Address
40 Wall Street
New York, New York

KIRLIN, CAMPBELL & KEATING, Esqs.
Attorneys for 3rd party defendants, Isthmian Lines Inc. and States Marine-Isthmian Agency, Inc.
Office and P.O. Address
120 Broadway
New York, New York

DANIEL J. COUGHLIN, Esq.
Attorney for 3rd party defendant, International
Cargo Gear Bureau, Inc.
Office and P.O. Address
110 William Street
New York, New York

HILL, BETTS & NASH, Esqs.
Attorneys for 3rd party defendant, Maher Stevedoring
Company, Inc.
Office and P.O. Address
1 World Trade Center
New York, New York

BIGHAM, ENGLAR, JONES & HOUSTON, Esqs.
Attorneys for 3rd party defendant, The Home Insurance
Company
Office and P.O. Address
99 John Street
New York, New York

AFFIDAVIT OF MARTIN B. MULROY IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MARTIN B. MULROY, being duly sworn deposes and says:

I am an attorney and member of the firm of Hill, Rivkins, McGowan & Carey, attorneys for the plaintiff herein and I have been in charge of this litigation from its inception and am fully familiar with all the facts herein set forth in support of plaintiff's motion for partial summary judgment pursuant to Rule 56, F.R.C.P.

Plaintiff purchased a revacycle completing machine from Gleason Works pursuant to Invoice No. 3-1829 dated 3-31-70 attached hereto, made a part hereof and marked exhibit "A".

The case containing this machine, weighing 24,800 pounds, was delivered to States Marine-Isthmian Agency, Inc. at Erie Basin Terminal on April 3, 1970 pursuant to the Dock Receipt attached hereto, made a part hereof and marked exhibit "B".

The testimony by deposition of Charles C. Lewis, Jr., the dock boss employed by States Marine-Isthmian Agency, Inc. on April 3, 1970 was as follows in connection with this matter:

* * *

Q What connection did you have with these two pieces of freight?

A We just put it on the deck of the HOWLETT and I was going to have it put on to the stock boat number 43, Hughes 48.

Q Did you order the two pieces of cargo to be placed on HOWLETT No. 18?

A We took them off. I think it came by truck, I'm not sure. As the truck comes in we take the freight off and we land it on the deck and then we transfer it later.

Q Transfer it to where?

A To the stock boat.

Q Did you give Mr. Witham any orders in connection with these two pieces of freight on April 3, 1970?

A He just leaves them on his deck until we have time and we shift it. But then he was supposed to go for a test, to test the boom.

Q Did you give him any orders then in connection with this cargo?

A I told him to take it off because we were going for the test. He had told me that it would be better for him--he could use it as stability. The next I heard it was in the drink.

* * *

Affidavit of Martin B. Mulroy

Q	As near as you can recall, would you state just what the conversation was between you?
A	He had told me that he was going to get the test and I told him to be on the safe side, "take it off."
Q	What did he say to that?
A	He said, "No, I think it's better if I leave it on and use it to keep it stable." We used to rent them out too, you see. Any time he was giving out we also took the freight off. In other words, any time we left the terminal the barge was clean. The train was clean. But he was only going across.
Q	You recall specifically that he asked that the cargo remain on there?
A	Yes.
Q	For his own purpose, that is for the stability of his crane?
A	Yes.

* * *

The defendants' arrangements for the lease of Derrick Barge No. 18 to the steamship company are set forth in a Memorandum of Agreement attached hereto, made a part hereof and marked exhibit "C".

As to the merits of this motion the attention of the court is requested to page 2 of such Memorandum where in the General Provisions the parties recognized Howlett's right to use the crane away from this steamship company's operations and Howlett's responsibility for proper certification of the crane.

The certificate issued based on the inspection of April 6, 1970 and the two communications by the inspector present at the time the cargo was lost overboard are attached hereto as one exhibit, made a part hereof and marked exhibit "D".

The court will note E. H. Johanson's comment that some on deck material did move overboard "at the time the barge was in a listed condition."

On deposition Mr. Johanson testified as follows:

* * *

Q Did you have any discussions with Mr. Witham with regard to the cargo that was on board the Derrick Barge No. 18?

THE WITNESS: I mentioned it and he thought it would be all right.

Q Do you recall in what fashion you mentioned it?

A No.

Q You simply brought to his attention that there was cargo on the deck of the vessel?

A Yes, and he expressed something that he thought it would be all right.

Q Why did you mention it to him?

A I know the barge will list when they load over the side.

Q	Did you say that also when you mentioned this to him?
A	It's common knowledge.

* * *

The crane operator Edward J. Witham furnished a written statement of events which has been typed for easy reading and both forms are attached hereto, made a part hereof and marked exhibit "E".

The carriers regular form bill of lading referred to in the dock receipt is attached hereto, made a part hereof and marked exhibit "F".

It is plaintiff's position to the court that the foregoing facts represent a prima facie case on the issue of liability as against the defendant Howlett and such defendant was not engaged by the Carrier in the performance of service under the bill of lading contract at the time plaintiff's cargo rolled off the barge so as to exclude them from any right to a package limitation of liability.

There is no genuine issue of fact as to the terms of the contracts and what Witham was doing when the cargo was lost overboard. The only issues are in defendants claims against third parties.

Since the machine was recovered from the water and repaired by its manufacturer plaintiff's action is for the cost of repairs claimed at $84,845.75.

WHEREFORE plaintiff respectfully petitions the court to grant plaintiff's motion for summary judgment against defendants Derrick Barge No. 18 and M. P. Howlett Inc. striking their defense of the $500 limitation of liability provision of 46 U.S.C.A. §1304 or otherwise, and refer this matter to a Commissioner for assessment of damages.

Martin B Mulroy
MARTIN B. MULROY

Sworn to before me this
16th day of August, 1973.

CATHERINE [illegible]RRAGHER
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-5[illegible]37015
Qualified in Queens County
Certificate filed in New York County
Commission expires March 30, 1974

EXHIBIT A--INVOICE NO. 3-1829 DATED 3-31-70 ANNEXED
TO AFFIDAVIT OF MARTIN B. MULROY

A 14

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE	[illegible] 20, 1969
CORRESPONDENT	HJ[illegible]
CUSTOMER ORDER NO.	[illegible] Toyota
DATE	
SHIPPING INSTRUCTIONS	[illegible]
SCHEDULED DATE	
TERMS: F.O.B. ROCHESTER, N.Y.	
OUR ORDER NO.	M-74083C
	Page 1
INVOICE NO.	3-1829 J
INVOICE DATE	3-31-70
SHIPPED VIA	Schuster
DATE	

SOLD TO

Ataka & Co., Ltd.
15-22, Nishiki 2-Chome
Naka-Ku
Nagoya, JAPAN

SHIP TO 17

King Shipping Company
90 West Broadway
New York, New York 10007

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
	1	No. 725 Straight Bevel REVACYCLE Completing Machine Serial No. 677206	$ 77,870.00	1	0	77,870.00
	1	Complete electrical equipment including installation for 3 phase, 60 cycle, 208 volts alternating current "GE Motors or Equivalent" See Pg. 2 (special limit switch)	9,030.00	1	0	9,030.00
		MOTORS: OPEN				
		MEASUREMENTS: METRIC				
		ARBORS: A-35636				
		CUTTERS: CD-20390				
		LANGUAGE PLATES: ENGLISH				
		COLOR: Std. Machine Tool Grey Furnish pulleys and belts for 2.6 seconds per tooth. MACHINE ARRANGEMENT: Arrange machine for cutting gear 41331-03207, 10 x 15 ratio, Summary No. 647.770. (Development required for standard series 1 ratio)				See Page 2

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO.
M-74083C

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE: August 20, 1969	CORRESPONDENT: HJHartraj	TERMS: F.O.B. ROCHESTER, N.Y.	OUR ORDER NO. M-74083C
CUSTOMER ORDER NO. 045837 Toyota	DATE:	SHIPPING INSTRUCTIONS:	SCHEDULED DATE:

SOLD TO
Ataka & Co., Ltd.
15-22, Nishiki 2-Chome
Naka-Ku
Nagoya, JAPAN

SHIP TO
19

Page 2
INVOICE NO. 3-1829 J
INVOICE DATE 3-31-70
SHIPPED VIA Schuster
DATE

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
		DEVELOPMENT: Z-54897				
	Extras:					
	1	Complete set of wrenches	N/C	1	0	N/C
	2	Index arrangements, 15 tooth, including index plate, Geneva plates, and Geneva drive pin plates	$ 613.75	2	0	1,227.50
	1	Screw type chip conveyor	1,480.00	1	0	1,480.00
	2	Lift cams for 13 to 18 teeth	215.00	2	0	430.00
	1	Automatic loader for completing Gear 41331-83292 on both sides of machine, including two loader units and two unloader units, but less blank magazines	38,255.00	1	0	38,255.00
	1	Additional charge for furnishing special limit switch in blank chutes, so machine will shut off at end of cutting cycle when there are fewer than three blanks in either chute	330.00	1	0	330.00
	1	Arrangement for 21" diameter completing cutters including cutter adapters and burring attachments [illegible]	2,850.00	1 See	0 Page	2,850.00 3

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO. M-74083C

Exhibit A

A 15

A 16

Exhibit A

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE August 20, 1969	CORRESPONDENT HJHarsaj	TERMS: F.O.B. ROCHESTER, N.Y.	OUR ORDER NO. M-74083C
CUSTOMER ORDER NO. U45837 Toyota	DATE	SHIPPING INSTRUCTIONS	SCHEDULED DATE

Page 3

INVOICE NO. 3-1829

INVOICE DATE 3-31-70

SHIPPED VIA Schuster

DATE .

SOLD TO

Ataka & Co., Ltd.
15-22, Nishiki 2-Chome
Naka-Ku
Nagoya, JAPAN

SHIP TO

19

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
	1	Cutter offset fixture including bar offset block	$ 270.00	1	0	270.00
	1	Set of necessary pulleys and belts for one additional slower cutter speed	195.00	1	0	195.00
	1	Pair burring tool fixtures for 21" diameter cutters	585.00	1	0	585.00
	1	Burring tool sharpening fixture	70.00	1	0	70.00
	1	Cutter handling device for 21" diameter cutters	120.00	1	0	120.00
	1	Machine setting indicator assembly	145.00	1	0	145.00
	1	Cutter transfer fixture for all diameter cutters	135.00	1	0	135.00
	1	Automatic production counter	260.00	1	0	260.00
	2	Air bore inspection device	245.00	2	0	490.00
	1	Cutter torque wrench for cutter lockup adjustment	75.00	1	0	75.00
	1	EXPORT BOXING	1,145.00	1	0	1,145.00

See Page 4

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO. M-74083C

CD 1634

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE	August 20, 1969
CORRESPONDENT	HJHarraj
CUSTOMER ORDER NO.	G45837 Toyota
DATE	
SHIPPING INSTRUCTIONS	
SCHEDULED DATE	
TERMS:	F.O.B. ROCHESTER, N.Y.
OUR ORDER NO.	M-74083C
	Page 4
INVOICE NO.	3-1829
INVOICE DATE	3-31-70
SHIPPED VIA	Schuster
DATE	

SOLD TO

Ataka & Co., Ltd.
15-22, Nishiki 2-Chome
Naka-Ku
Nagoya, JAPAN

SHIP TO

19

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
		Send all instructions, diagrams, and printed material in three (3) copies - One (1) set by airmail direct to Ataka, Nagoya office, and the other two (2) sets with the machine at time of shipment.				
		CASE MARKINGS: Stencil each package on all four sides and top as follows: A T G45837 A K NAGOYA MADE IN U.S.A.				
		General Export License G-DEST Schedule B # 715.1020 Not positive list-type commodity				
		LOT: 6772				
		During runoff save 100 good parts, satisfactory for production, to be returned with machine. Ship these with machine in a package marked "100 sample gears 41331-03202".		100	0	
		Use for machine runoff 200 differential side gear part No. 41331-03202, received 12/5/69, Consignment No. 2709.		None		
				See Page 5		

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO.
M-74083C

Exhibit A

A 17

A 18

Exhibit A

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE: November 12, 1969
CORRESPONDENT: JAOstrandorsaj for H. [redacted]
TERMS: F.O.B. ROCHESTER, N.Y.
OUR ORDER NO. A-35765

CUSTOMER ORDER NO. G45837 Toyota
DATE:
SHIPPING INSTRUCTIONS:
SCHEDULED DATE:

Page 5
INVOICE NO. 3-1829
INVOICE DATE 3-31-70
SHIPPED VIA Schuster
DATE

SOLD TO
Ataka & Co., Ltd.
15-22, Nishiki 2-Chome,
Naka-Ku
Nagoya, JAPAN

SHIP TO
SHIP WITH
1/K725E ON
M-74083C LOT: 6772

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
		For the No. 6 Angular Hypoid Testers, Serial Nos. 33284 and 33289:				
	1	Complete set of arbor equipment for soft testing gear Part No. 41331-03202	$ 745.00	1	0	745.00
	1	Spare collet for hard testing gear Part No. 41331-03202	134.00	1	0	134.00

General Export License G-DEST
Schedule B # 728.5066
Not positive list-type commodity

METRIC M/L

See Page 6

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO. A-35765

CD 1636

Gleason Works
1000 UNIVERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE August 25, 1969	CORRESPONDENT HJHartaj	TERMS: F.O.B. ROCHESTER, N.Y.	OUR ORDER NO. A-35636

CUSTOMER ORDER NO. G45637 Toyota	DATE	SHIPPING INSTRUCTIONS	SCHEDULED DATE

Page 6

INVOICE NO. 3-1829
INVOICE DATE 3-31-70
SHIPPED VIA Schuster
DATE

SOLD TO
Ataka & Co., Ltd.
15-22, Nishiki 2-Chome
Naka-Ku
Nagoya, JAPAN

SHIP TO
WITH M-74083
1/K725E
LOT: 6772

ITEM NO.	QUAN. ORD.	DESCRIPTION	UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
		For the No. 725 Straight Bevel REVACYCLE Completing Machine on M-74083C				
	3	Complete sets of chucking equipment for cutting gear 41331-03202	$ 555.00	3	0	1,665.00
	5	Spare collets for above	158.00	5	0	790.00
	1	Machine setting bars for cutting gear 41331-03202, standard series 3, 10 x 15 ratio, Summary No. 647.770 NOTE: Process A-35636 and A-35637 together.	65.00	1	0	65.00
		General Export License G-DEST Schedule B # 719.5440 Not positive list-type commodity				
		METRIC M/L E-9801				
				See	Page	7

OUR ORDER NO.
A35636

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

Exhibit A

A 19

A 20

Exhibit A

Gleason Works

10 [illegible]VERSITY AVE. ROCHESTER, N.Y. 14603

INVOICE

DATE 7/[illegible]/69

CORRESPONDENT AH

TERMS Usual

F.O.B. ROCHESTER, N.Y.

OUR ORDER NO. CD-20390

CUSTOMER ORDER NO. G-45837

DATE

SHIPPING INSTRUCTIONS

SCHEDULED DATE

Page 7

INVOICE NO. 3-1829

INVOICE DATE 3-31-70

SHIPPED VIA Schuster

DATE

SOLD TO

Ataka & Co., Ltd.
Kyogin Bldg.
15-22, Nishiku 2-Chome,
Naka-Ku
Nagoya, JAPAN

SHIP TO

Ship with: 1-K725E on M-74083 C
and Z-54897

ITEM NO.	QUAN. ORD.	DESCRIPTION		UNIT PRICE	QUAN. SHIP	QUAN. DUE	TOTAL
1	4	21" dia., 75 blades, REVACYCLE gear completing cutters, Spec. No. 6K9BP166T Serial No. RJB5920 thru RJB5926 (even nos. only)	RJB14NC166	$1138.00	4	0	4,552.00
2	4 sets	21" dia., 75 blades, REVACYCLE gear completing blades, Spec. No. 6K9BP166T Serial No. RJB5928 thru RJB5934 (even nos. only)	RJB4SC166	510.00	4	0	2,040.00
3	5	Burring tools Mark tools TK5P166T	31-725-021	43.00	5	0	215.00
4	5	Burring tools Mark tools TKP166T	31-720-021	43.00	5	0	215.00
							145,383.50
				Less 12% on amount of $144,238.50			17,308.62
							128,074.88

Customer: Toyota Motor Co., Ltd.

General Export License G-DEST, Schedule B # 695.2530 (Item 2)
Schedule B # 695.2446 (Item 1,3,4)
Not positive list-type commodity
Note: "These commodities licensed by U.S. for ultimate destination Japan. Diversion contrary to U.S. Law prohibited." Case 7574, Net Wt. 21,800#
Gross Wt. 24,800#, Size: 12'-0"x8'-1"x8'-1"
Cu. Ft. 785

"CERTIFIED CORRECT"
GLEASON WORKS

Secretary & Treasurer

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U. S. Department of Labor issued under Section 14 thereof.

OUR ORDER NO. CD-20390

CD 1630

EXHIBIT B--DOCK RECEIPT ANNEXED TO AFFIDAVIT OF MARTIN B. MULROY

FORM-229

States Marine-Isthmian Agency, Inc.
AS AGENT FOR CARRIER NAMED BELOW
(SPACES IMMEDIATELY BELOW FOR SHIPPERS MEMORANDA—NOT PART OF BILL OF LADING)

DELIVERING CARRIER TO STEAMER: SCHUSTERS EXPRESS
CAR NUMBER–REFERENCE: PRO No.15-0468
90 W. BROADWAY 10007 349-5350

FORWARDING AGENT - REFERENCES: KING SHIPPING CO. NEW YORK, N. Y. Tel. FMC No. 312 REF.
EXPORT DEC. NO.: 28406
PERMIT DATE: 2

DOCK RECEIPT
NON-NEGOTIABLE

SHIPPER: ATAKA AMERICA, INC. 633 THIRD AVENUE, NEW YORK, N.Y.

[redacted]

VESSEL: STEEL ADMIRAL
VOYAGE NO.:
FLAG: AMER.
PIER: ISTH.E.B.TERM.BKLYN.
PORT OF LOADING: NEW YORK

PORT OF DISCHARGE (Where goods are to be delivered to consignee or on-carrier): NAGOYA

APR 3 1970

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASURE-MENT	GROSS WEIGHT
A G-45837 A NAGOYA C/No.7574	T ✓ X ✓	(1) CASE "MACHINERY-GLEASON No.725 STRAIGHT BEVEL REVACYCLE MACHINE COMPLETE" G-DEST HEAVY LIFTS "FREIGHT PAYABLE IN NEW YORK"	[redacted] 784-1	24,800 [redacted]

U.S. law prohibits disposition of these commodities to the Soviet Bloc, Communist China, North Korea, Macao-Hong Kong or Communist controlled areas of Viet Nam and Laos, Cuba, or So. Rhodesia except as authorized by the U.S.

CARRIER: *States Marine Lines, Inc.* ○ ISTHMIAN LINES, INC. ○ ○

DELIVERED BY

TRUCK
LIGHTER ______

ARRIVED— DATE ______ TIME ______

UNLOADED— DATE ______ TIME ______

CHECKED BY ______

PLACED IN SHIP / ON DOCK LOCATION ______

-Received the goods or packages said to contain goods in apparent good order and condition, except as otherwise indicated herein, for shipment subject to all the terms of the regular form of bill of lading of the carrier as now in use, including all clauses presently being stamped or endorsed thereon, copies of which may be obtained on application to the undersigned.

Original ☐
Duplicate ☐
Triplicate ☐
Quadruplicate ☐

States Marine-Isthmian Agency, Inc.

BY ______
RECEIVING CLERK

DATE ______

D/R No.

Deft's Ex. 3E For Ident
9/12 1972 Richard B. Greenspan

A 22

Exhibit B

SCHUSTER
40970

SHIPPERS ARE REQUESTED TO FILL OUT AS BELOW

MARKS	No. of Pkgs.	MEASUREMENTS						Cubic Ft. Each		Total Cubic Ft.		Gross Weight
		Length		Breadth		Depth						
		Ft.	In.	Ft.	In.	Ft.	In.	Ft.	In.	Ft.	In.	
	①	12	0	8	1	8	1			784.08		24800
[redacted]												
										Totals		

Rec'd ① 5/7

4-3-70

PRINTED IN U.S.A.

EXHIBIT C--MEMORANDUM OF AGREEMENT ANNEXED TO AFFIDAVIT OF MARTIN B. MULROY

Established 1875

M. P. HOWLETT, INC. *Stevedores and Contractors*
SPECIALISTS IN BULK CARGOES • FLOATING WHIRLY CRANES

HUDSON TRUST BUILDING
415 - 32nd STREET
UNION CITY, NEW JERSEY

N. Y. City Phone: BOwling Green 9 - 8646
Union City Phone: UNion 6 - 1566
Night Phone: UNion 9 - 0343

MEMORANDUM OF AGREEMENT by and between M.P. HOWLETT, INC. and ISTHMIAN LINES, INC. for the use of the crane M.P. HOWLETT #18.

Lease Period:

The period of this lease shall be two years commencing on October 1, 1969, and ending on September 30, 1971.

Lease Payments:

The annual rental for the use of the crane shall be $90,000 or a total of $180,000 for the two year period. Billing by Howlett shall be monthly at the rate of $7,500 per month.

Insurance:

It is agreed that Howlett will maintain their present liability insurance in force in connection with this crane and that Isthmian Lines, Inc. will continue as a named insured on Howlett policy.

Maintenance:

Howlett will be responsible for all repairs and maintenance of the crane as well as all supplies, except fuel oil, which latter will be paid for by Isthmian Lines, Inc. As in the past provisions will be made by Isthmian Lines, Inc. to allow Howlett time to make repairs so that they can be carried out during straight time.

Crew:

The crane crew will be paid by Howlett, and will remain Howlett's employees, but Howlett will be reimbursed by Isthmian

Exhibit C

Lines, Inc. for the cost of the crew, including insurance, payroll taxes and Union welfare and pension expenses, vacation and holidays, and any other payroll expense, plus a 5% billing charge.

General Provisions:

Howlett shall have the right to use the crane away from Isthmian Lines, Inc. operations, whenever permission for such use shall be given by Isthmian Lines, Inc. which permission shall not be unreasonably withheld.

Credit shall be given Isthmian Lines, Inc. against the rental of the crane for any time that Howlett uses it in accordance with the foregoing sentence and a schedule to be worked out between the parties.

Howlett undertakes to keep the crane in good repair and condition; and to replace it with a comparable crane should it be out of service for an extended period, if possible.

It shall be the responsibility of Howlett to maintain in good order the Certificate which has been issued to this crane by the U.S. Department of Labor; if at any time Certificate may be lifted because of neglect or any other reason, then Howlett shall take immediate steps to rectify the condition which caused the remission of the Certificate, and rental shall automaticaly cease until the Certificate may be re-issued, or again be in effect.

Isthmian Lines, Inc. undertakes to exercise all reasonable discretion in the use of the crane, and to exercise reasonable good care in the use thereof.

It is understood and agreed that if any question arises as to the interpretation of this agreement custom and practice between the parties during the past three years, while the crane was leased to Universal, will govern.

M.P. HOWLETT, INC.

By: Harry F. Rollmann

Harry F. Rollmann
Executive Vice-President

ISTHMIAN LINES, INC.

By:

Captain G.H. Evans
Vice-President
States Marine-Isthmian Agency, In
As Agents

EXHIBIT D--CERTIFICATE OF INSPECTION AND COMMUNICATIONS ANNEXED TO AFFIDAVIT OF MARTIN B. MULROY

Pltfs Ex. 6 for id. March 13, '72

Inter-Office Communication — INTERNATIONAL CARGO GEAR BUREAU, INC

From E.H. JOHANSON Date March 9, 1972

To MR. CHARLES G. VISCONTI - PRESIDENT

Subject HOWLETT CRANE #18

1. Howlett Crane #18 was attended by me on April 6, 1970 at Todd Shipyards, Brooklyn, New York for the purpose of Quadrennial inspection. An associated ICGB certificate MT-321 was issued on April 7, 1970 effective April 6, 1970.

2. It is recalled that during the conduct of testing by Mr. E. Witham, crane operator, for Howlett who manipulated the crane for ICGB observation prior to documentation, some on deck material did move overboard at the time the barge was in a listed conditions.

3. No incidents on April 6, 1970 are recalled which could have involved the mentioned ICGB attendance and the procedures accomplished by Mr. E. Witham for ICGB documentation.

E.H. Johanson

E.H. Johanson

EHJ:lm

Exhibit D

April 7, 1970

M.F. Howlett, Inc.
415 32nd Street
Union City, New Jersey

Attention: Mr. D. Witham, Manager

re: HOWLETT #18

Gentlemen:

Enclosed is our certificate number MT-321, USDL form MAR 14 which is issued to the referenced crane in accordance with our annual and quadrennial inspection of the crane and accessory gear, including unit testing - completed on April 6, 1970 at Brooklyn, New York.

It is recommended that the certificate be suitably posted in the operating cab, or otherwise at the worksite, as may be required by associated regulations, and by such means as will assure continuing durability and legibility of the document.

Sincerely yours,

INTERNATIONAL CARGO GEAR BUREAU, INC.

E.H. Johanson
Chief Surveyor

EHJ:lm
c.c. USDL form MAR 14

A 27

Exhibit D

UNITED STATES DEPARTMENT OF LABOR
Wage and Labor Standards Administration
Bureau of Labor Standards

FORM LSB-005 MAR-14

Paid
322

QUADRENNIAL CERTIFICATION

Certificate No. MT-321

CERTIFICATE OF UNIT TEST AND/OR EXAMINATION OF CRANE, DERRICK, OR OTHER MATERIAL HANDLING DEVICE
(BUREAU'S COPY)

1. Owner M.P. HOWLETT, INC. 415 32nd Street Union City, N.J.

2. Description (check): Crane x Derrick Other (describe)
Location: (a) Remains at worksite ___ (b) Changes worksite ___ (c) Aboard vessel x
If (a) or (c), describe: Permanently mounted on steel barge 100' x 50' x 8'
If crane, type (truck, rail, etc.): Powered by diesel, revolving type
Manufacturer American Hoist & Derrick Model R-20 Serial No. 77604-5
If derrick, describe:
If spout or other device, describe:
Owner's identification, if any: Howlett Crane #18

3. Service status at time of survey (check): Lifting With hook Clamshell Magnet
Other, describe

4. Boom at time of survey (except bridge cranes): Length 86' Type Hammerhead, steel truss*

5. Test loads applied (cross out if only examination conducted):

Fall	No. Parts	Wire Size	Radius	Proof loads	Rated loads
Main	8	1-1/8"	40'-35'	66 LT	60 LT

Means of application of proof load:
Basis for assigned load ratings: Previous ICGB Quadrennial certification

6. Remarks and/or limitations imposed: * with angle chords & lacing

I certify that on the 6 day of Apr. 1970, the above described [illegible] tested and examined) (xxxxxxxx) by the undersigned [illegible] representative, [illegible] and examination) (xxxxxxxx) met in all respects with the requirements of 29 CFR [illegible] requirements declared compatible under the provisions of 29 CFR 1504.1[illegible] considered to constitute an unsafe [illegible] condition have been corrected [illegible] has been found to be in compliance [illegible] with the [illegible]

Name and address of [illegible] test and/or examination International Cargo Gear Bureau, Inc. [illegible] N.Y.

Name and address of authorized person carrying out the test and [illegible]
Attended by E.H. Johanson ICGB #001 New York

Position of signatory in the organization making the test and/or examination
chief surveyor APR 7 '70

Signature E.H. Johansen
Date

E. H. JOHANSON
INTERNATIONAL HEADQUARTERS
OFFICE NEW YORK

NOTE: This certificate may be issued only by persons acting under [illegible] Standards under the provisions of 29 CFR Part 1919 [illegible]

EXHIBIT E--STATEMENT OF CRANE OPERATOR WITHAM ANNEXED TO AFFIDAVIT OF MARTIN B. MULROY

Hawlett #18
Brooklyn, N.Y. April 30, 1970

My name is Edward Witham, age 36, married and I reside at 27 Brookwood Parkway, Jackson, N.J. My wifes name is Theresa. My home phone number is 363-6091. I have been employed for 18 years by M. P. Hawlett Inc. Union City, N.J. as an engineer. On Friday, April 3, 1970 around 8:00 A.M. I loaded a 12 ton Gleason case on the deck of Hawlett Crane number 18. Between 8:30 A.M. and 9:00 A.M. I loaded two reels of cable onto the deck of Hawlett number 18 from the Central New Jersey barge number 259. Each of the reels of cable weighed about 10 ton. States Marine Isthmian Agency charters Hawlett number 18. After that I continued to load reels of light cable and cargo from the Penn 281 barge and the Central New Jersey 259 onto the dock. From 1:00 P.M. to 4:00 P.M. I loaded reels of light cable from the Penn 281 and Penn 165 to the dock. The two barges were tied alongside the Hawlett.. At the stern of the Hawlett tied against the dock was a standard stock boat the Hughes number 48. Around 4:00 P.M. we started to load the last Gleason case from a truck to our deck. This case also weighed about 12 tons and it was loaded on the deck about 4:30 P.M. About that time the dock boss Charles Lewis who is employed by States Marine Isthmian Agency came around. He asked if I could reach to put the 2 Gleason cases and the 2 reels of cable on the Hughes 48. The Hughes 48 was half full of cargo and I told him I couldn't reach the other half with my crane. In order to have placed the cargo that was on my deck to the Hughes 48 the two Penn barges would have had to been moved away from the Hawlett's starboard side and the Hughes 48 moved there. There was also another barge in front of my bow which would have had to be moved. I told Charles Lewis that it could wait till Monday when I returned from testing the Hawlett and I would then put the cargo on the Hughes 48. He agreed that this would be alright. Since it would have involved so much work in moving all the barges involved it seemed like the most sensible thing to do. I had no documents or ocean bills of lading for the cases or reels of cable. The Hawlett number 18 was due to be tested for its certification. This means the test involved how much weight I could lift safely and place it on a ship. I have lifted cargo of 60 tons with cargo on my deck without any trouble. In my 18 years as a crane operator I have never had cargo shift or go overboard from my deck. The Howlett was due to be tested in February but it was postponed because of the tugboat strike. We had been operating with a temporary certification. The cranes are tested every 4 years for their lifting strength. Every year the gear and components are

Exhibit E

inspected. Monday April 6, 1970 we were scheduled for inspection by the International Cargo Gear Bureau, New York. This test was to be conducted at pier #5 Todds Erie basin which is about 10 minutes from our Erie basin terminal docking. This was the first open date for the test. We were tied up at the dock on April 6, 1970 preparing to test the Hawlett. With me in the operating cab was the Chief surveyor for International Cargo Gear Bureau, E. H. Jahnson. He was there to check the weight I was about to lift and check the cables and other gear. This test involved lifting 55 ton from the deck at 50 feet from the center pin of the crane with compensations for the list. The surveyor was aware of the cargo on my deck since he had to measure 50 feet out on the deck from our center pin. This would have been 50 feet uncompensated for. One of the Gleason cases was on the deck directly on the center line. The other Gleason case and two reels of cable were placed behind the first Gleason case. There is an indicator on the boat which showed that the 2 reels of cable and Gleason case were laying level on the barge. These three pieces were in line. The two cables had been chocked on both sides of the reel and they were tight up against the case. I lifted the 66 ton test tank and swung it out over my deck and stopped at the center line. I lowered the boom to exactly 50 feet which had already been previously marked. Then I boomed back up on my indicator to the amount that I had compensated for on the lift from the dock. Then I started to swing the test tank over to my starboard side. When I got to just about completely to the starboard side I felt the hull starting to roll bad. I immediately started to boom up. I didn't know what was happening I looked to my left and saw the cargo going overboard. I realized the shift in cargo had caused the sudden surge. The Gleason case and the two reels went overboard. I had all I could do to keep the crane from toppling over. The other Gleason case did not move at all. I immediately told States Marine what had happened. Two divers were called and we were able to raise the two reels around 12:30 P.M. We raised the case around 4:00 P.M. We shifted the crane back to the Erie Basin. The next day we loaded the cargo and 2 reels of cargo onto the deck. We washed the 2 reels of cable down with fresh water and reoiled them so they wouldn' rust. If there was any doubt in my mind about the security of the cargo on my deck I would have had it removed since my life would also be in danger as I operate the crane in a cab which is about 65 feet up from the deck. The cargo had been placed in the deck in a manner so that the barge was balanced. The reels of cable were chocked and secured with scantling. I have read this 5 page report and it is true to the best of my knowledge.

Exhibit E

Howlett #18
Brooklyn N.Y. April 30, 1970.

y name is Edward Witham, age 36, married and reside at 27 Brookwood Parkway, Jackson N.J. y wife's name is Theresa. My home phone number is 363-6091. I have been employed for 18 years y M. P. Howlett Inc, Union City, N.J. as an engineer. On Friday April 3, 1970 around 800 AM. I loaded a 12 ton Gleason case on the deck of Howlett Crane number 18. Between 830 AM and 900 AM I loaded two reels of cable onto the deck of Howlett number 18 from the Central New Jersey barge number 259. Each of the reels of cable weighed about 10 ton. States Marine Isthmian Agency charters Howlett number 18. After that I continued to load reels of light cable and cargo from the Penn 281 barge and the Central New Jersey 259 onto the dock. ~~Around~~ From 100 PM to 400 PM I loaded reels of light cable from the Penn 281 and Penn 165 to the dock. The two barges were tied alongside the Howlett. At the stern of the Howlett tied against the dock was a standard stock boat the Hughes number 48. Around 400 PM we started to load the last Gleason case from a truck to our deck. This case also weighed about 12 tons and it was loaded on the deck about 430 PM. About that time the dock boss, Charles Lewis who is employed by States Marine Isthmian Agency came around. He asked

Edward J. Witham   Witness: Richard Pozanyski

Exhibit E

April 30, 197

I called back to put the 2 Gleason cases
d the 2 reels of cable on the Hughes 48.
he Hughes 48 was half full of cargo and I told
im I couldn't reach the other half with my
rane. In order to have placed the cargo that
as on my deck to the Hughes 48 the two
Penn barges would have had to been moved
way from the Howletts starboard side and the
Hughes 48 moved there. There was also another
barge in front of my bow which would have
had to be moved. I told Charles Lewis that it
ould wait till Monday when I returned from
testing the Howlett and I would then put the cargo
on the Hughes 48. He agreed that this would be
alright. Since it would have involved so much
work in moving all the barges involved it seemed
like the most sensible thing to do. I had no documents
r ocean bills of lading for the cases or reels of cable.
The Howlett number 18 was due to be tested for its
certification. This means the test involved how much
weight I could lift safely and place it on a sling.
I have lifted cargo of 60 tons with cargo on my
deck without any trouble. In my 18 years as a
crane operator I have never had cargo slide
or go overboard from my deck. The Howlett was

Edward J [illegible] Witness: Richard Pozanycki

Exhibit E

April 30, 1970

ue to be tested in February but it was postponed cause of the tugboat strike. We had been operating ith a temporary certification. The cranes are tested very 4 years for their lifting strength. Every ear the gear and components are inspected. Monday April 6, 1970 we were scheduled for inspection by the International Cargo Gear Bureau, New York. This est was to be conducted at pier 4 S Todds Erie basin which is about 10 minutes from our Erie basin terminal docking. This was the first open date for the test. We were tied up at the dock on April 6, 1970 preparing to test the Howlett. With me in the operating cab was the Chief surveyor for International Cargo Gear Bureau, E. H Johnson. He was there to check the weight I was about to lift and check the cables and other gear. This test involved lifting 66 ton from the dock at 50 feet from the center pin of the crane with compensation for the list. The surveyor was aware of the cargo on my deck since he had to measure 50 feet out on the deck from our center pin. This would have been 50 feet uncompensated for. One of the Gleason cases was on the deck directly on the center line. The other Gleason case and two reels of cable were placed behind the

Edward J [illegible] Witness: Richard Pozarycki

Exhibit E

April 30, 1970

first Gleason Case. There is an indicator on
boat which showed that the 2 reels of cable
and Gleason case were laying level on the barge.
These three pieces were in line. The two cables
had been chocked on both sides of the reel and
they were tight up against the case. I lifted the
26 ton test tank and swung it out over my deck
and stopped at the center line. I lowered the boom
to exactly 50 feet which had already been
previously marked. Then I boomed back up on
my indicator to the amount that I had compensated for
on this off from the dock. Then I started to swing
the test tank over to my starboard side. When I
got to just about completely to the starboard side
I felt the hull starting to roll bad. I immediately
started to boom up. I didn't know what
was happening. I looked to my left and saw
the cargo going overboard. I realized the shift
in cargo had caused the sudden surge. The
Gleason case and the two reels went overboard. I
had all I could do to keep the crane from
toppling over. The other Gleason case did not move
at all. I immediately told States Marine what had
happened. Two divers were called and we were able
to raise the two reels around 1230 Pm. It [illegible]

Edward J. [illegible] Witness: Richard Pozaryski

Exhibit E

April 20, 1972 [illegible]

They rose around 400 pm. We shifted the crane back to the Erie Basin. The next day we loaded the cargo and 2 reels of cargo onto the deck. We washed the 2 reels of cable down with fresh water and oiled them so they wouldn't rust. If there was any doubt in my mind about the security of the cargo on my deck I would have had it removed since my life would also be in danger as I operate the crane in a cab which is about 65 feet up from the deck. The cargo had been placed on the deck in a manner so that the barge was balanced. The reels of cable were chocked and secured with scantling. I have read this 5 page report and it is true to the best of my knowledge X Edward J. [illegible]

Witness: Richard Pozanyski

EXHIBIT F--BILL OF LADING ANNEXED TO AFFIDAVIT
OF MARTIN B. MULROY

States Marine Lines **ISTHMIAN LINES, INC.**

DELIVERING CARRIER TO STEAMER

CAR NUMBER–REFERENCE

FORWARDING AGENT - REFERENCES

EXPORT DEC. NO.

BILL OF LADING

SHIPPER ☐☐☐☐☐☐☐☐☐☐☐

CONSIGNED TO
ORDER OF

ADDRESS ARRIVAL NOTICE TO

ALSO NOTIFY

☐☐☐☐ ☐☐☐ ☐☐

VESSEL

VOYAGE NO.

FLAG

PIER

PORT OF LOADING

☐☐☐ PORT OF DISCHARGE (Where goods are to be delivered to consignee or on-carrier)

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASURE-MENT	GROSS WEIGHT

ALL CHARGES EX SHIP'S TACKLE FOR ACCOUNT OF CARGO

CARRIER: States Marine International, Inc. ○ ISTHMIAN LINES, INC. ○ ○

______ @ ______ $ ______
______ @ ______ $ ______
______ @ ______ $ ______
______ @ ______ $ ______
______ @ ______ $ ______
______ @ ______ $ ______

(CHECK ONE OR BOTH

☐	To Be PREPAID	TOTAL $ ______
☐	COLLECT	$ ______

In witness whereof, the carrier by its Agent has signed three Bills of Lading, all of the same Tenor and date, one of which being accomplished, the others to stand void.

Dated At: ______

To Be Paid At: ______

BILL OF LADING NUMBER	DATE

FOR THE MASTER States Marine-Isthmian Agency, Inc.

By: ______

FORM-1330
J.K.A. 12-15-69 REV.

Exhibit F

Received the following described Goods or Packages said to contain Goods, in apparent good order and condition except as otherwise indicated herein, to be transported to the port of discharge or transshipment, or so near thereunto as Vessel may always safely get, lie and leave always afloat at all stages and conditions of water and weather and there to be delivered or transshipped, all subject to all the terms herein.

It is agreed that the following terms shall govern the relations, whatever they may be, between the parties herein included in the words "Merchant" and "Carrier" in every contingency whenever, wherever and however, occurring and even in case of deviation or unseaworthiness of Ship at the time of loading, inception of the voyage or subsequently and none of the terms of this bill of lading shall be considered to have been waived unless by an express written waiver signed by a duly authorized agent of Carrier.

1. Definitions. The word "Ship" or "Vessel" shall include any substituted vessel and any craft, lighter or other means of conveyance owned, chartered or operated by Carrier in the performance of this contract; the word "Carrier" shall include the vessel named herein, her owner, operator, charterer, Master, agent and any substituted carrier, whether the owner, operator, charterer, agent or Master shall be acting as carrier or bailee, the word "Merchant" shall include the person named as shipper in this bill of lading, the person for whose account the goods are shipped, the consignee, the holder of the bill of lading properly endorsed, the receiver and the owner of the goods; the word "Goods" shall include wares, merchandise and articles of every kind including containers, vans, trailers, palletized units and other packages; the word "Package" as used herein and in the United States Carriage of Goods by Sea Act, shall include containers, vans, trailers, palletized units and all pieces, articles and things of any description except goods shipped in bulk; the words "Invoice Value" mean the actual value of the goods at the time and place of shipment and shall not include freight, insurance or any other charges or items whatever, whether stated or included in any consular or commercial invoice or other paper.

2. Clause Paramount. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, 1936, or similar Act in force in the locality where issued. All the provisions of such Act shall apply throughout the entire time that Goods are in Carrier's custody including periods of Carrier's custody before loading on and after discharge from Vessel whether Carrier be acting as such or as bailee during such periods. This bill of lading is also subject to and incorporates the provisions of Sections 4281-4286, 4289 of the U.S. Revised Statutes and amendments thereto.

3. Carrier's Servants, Agents, Stevedores, Contractors, etc. Because Carrier requires persons and companies to assist it in the performance of all work and services undertaken by it in connection with the cargo described herein as well as the cargo of others transported or to be transported by Carrier, it is expressly agreed between the parties hereto that the Master, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees and others used, engaged or employed by Carrier in the performance of the aforesaid work and services of Carrier, shall each be a beneficiary of this contract and shall be entitled to all exemptions and immunities from and limitations of liability which Carrier has under this bill of lading, whether written, printed or stamped hereon or incorporated by reference herein, and under the United States Carriage of Goods by Sea Act, 1936, and in entering into the provisions of this Clause, Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent and trustee of each of the persons and companies described above, all of whom shall be deemed parties to the contract in or evidenced by this bill of lading.

4. Scope of Voyage, Government Orders, Liberties, etc. The voyage may or may not include all usual, scheduled, direct, ordinary or advertised routes or ports whether or not named or disclosed in this bill of lading. At any time and in all situations Vessel may sail with or without pilots and/or tugs, adjust equipment, go on drydock or ways or to repair yards, take on fuel or stores, tow or be towed, assist vessels, save life and property of Carrier or others. Carrier, Master and Ship shall have liberty to comply with any orders or directions of any Government or international organization or association of governments or persons or committees thereof. In any situation whatever, including, but not limited to, strikes, work stoppages, closure or blockages of canals, rivers or other waterways, which, in the judgement of Carrier or Master, is likely to give rise to risk of capture, seizure, detention, damage, delay or disadvantage of Ship, cargo and/or those on board or to make it unsafe, imprudent or unlawful for any reason to commence or continue the voyage or to enter or discharge Goods at the port of discharge or the usual or intended place of discharge in such port, Carrier or Master may – (i) decline to load, or having loaded Goods, may require Merchant to take delivery of Goods at the port of shipment and, on failure to do so, may warehouse Goods at their own risk and expense; – (ii) proceed to such convenient port or place as the Master and Carrier may in their sole discretion select and require Merchant to take delivery at such port or place and, on failure to do so, may warehouse Goods at their own risk and expense; – (iii) carry Goods back in the same or substituted Ship to the country of shipment and there discharge and deliver them to the party entitled thereto or warehouse or store them for the risk and account of Goods; – (iv) retain Goods on board for discharge at the original port of discharge on a subsequent voyage or forward them on a substitute ship to the original port of discharge for the risk and account of Goods.

The exercise of any of the foregoing liberties by Carrier or Master shall constitute complete performance by the Carrier hereunder and Carrier shall be free from any further responsibility for Goods and Carrier shall be entitled to a reasonable extra compensation for any such services including additional freight if the voyage is thereby prolonged. Ship may carry contraband, explosives, munitions, war-like stores, hazardous cargo and may sail armed or unarmed and with or without convoy.

5. Description of Goods etc. The particulars and description of Goods appearing in this bill of lading are furnished by Merchant and are not conclusive on and do not constitute admissions of or representations by Carrier as to the correctness of marks, numbers, quantity, measurement, weight, gauge, contents, nature, condition, condition of containers, quality, value or declared value, if any, stated herein. Single pieces or Packages exceeding 4480 lbs. in gross weight or which because of shape, size or condition cannot be handled with Ship's regular tackle, shall be liable to pay extra charges for loading, handling, transshipping or discharging. The shipper and the goods shall be liable for, and shall indemnify the carrier in respect of any injury, loss, damage or claim whatever on the part of anyone whatever arising from shipper's failure to declare correctly the nature, character and weight of the goods and mark them as above provided, or from failure to mark the goods or package as provided by law.

6. Dangerous Goods. Goods that are or become noxious, hazardous or dangerous to Vessel, other cargo or those on board may be destroyed or may be rendered innocuous without any compensation in any form to Merchant in general average or otherwise.

7. Stowage on Deck. The shipper represents that the goods need not be stowed under deck unless the shipper informs the Carrier in writing before delivery of the goods to the Carrier that underdeck stowage is required. Goods stowed in poop, forecastle, dockhouse, shelter deck, passenger spaces, storeroom, or any other covered-in space shall be deemed to be stowed under deck for all purposes, including general average. Goods, whether or not shipped in containers, vans, or trailers, may be carried on deck at Carrier's option and, if carried on deck, all risks of loss or damage by perils inherent in such carriage shall be borne by the shipper. Carrier shall not be required to specially note, mark or stamp any statement of on deck carriage on this bill of lading, any custom to the contrary notwithstanding.

8. Live Animals etc. Live animals, birds, reptiles and fish are received and carried solely at Merchant's risk of accident, disease or mortality, but in other respects they shall be considered Goods and subject to all terms and provisions of this bill of lading and the Carriage of Goods by Sea Act relating to Goods.

9. Both to Blame Collision Clause. If Ship comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, mariner, pilot or of the servants of Carrier in the navigation or in the management of Ship, the owners of Goods carried hereunder will indemnify Carrier against all loss or damage to, or any claim whatsoever, of the owners of Goods, paid or payable by the other or non-carrying vessel or her owners to the owners of said Goods and set-off, recouped or recovered by the other or non-carrying vessel or her owners, as part of their claim for damages against the carrying Ship or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision, contact, stranding or other accident.

10. General Average, Jason and Salvage. General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1950 at the Port of New York or last port of discharge, at Carrier's option, and as to matters not provided for in these Rules, according to the laws and usages at the Port of New York. Average agreement and bond, together with such additional security as may be required by Carrier, shall be furnished before delivery of Goods.

In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Carrier is not responsible by statute, contract, or otherwise, Goods, Merchant, or owners of Goods shall contribute with Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of Goods. If a salving ship is owned or operated by Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

11. Delivery. Carrier shall be under no requirement to give Merchants notice of arrival any custom of the port notwithstanding. The port authorities are authorized to grant a general order for discharging immediately on the arrival of Ship and Carrier may discharge Goods directly they come to hand on any wharf, craft or place that Carrier may select continuously by day or night, Sundays and holidays included, regardless of weather conditions. If required by Carrier, Goods shall be taken by Merchants from Ship's tackle as they are discharged, or, at Carrier's option, the goods may be placed at Merchant's disposal ashore or afloat.

If Goods are not removed by Merchant as soon as they are placed at Merchant's disposal immediately under tackle, or ashore or afloat, as the case may be, they shall be at their own risk and expense and delivery by Carrier shall be complete. In such cases, Carrier may, at the risk and expense of Goods and subject to any lien of Carrier, permit Goods to lie where landed or send them to shore or warehouse without notice of any such disposition. When poss Goods is taken by the customs or other authorities it shall be deemed taken by them as agent of Merchant subje lien of Carrier. Landing and delivery charges and pier dues shall be at the expense of Goods unless inclu freight.

Liquid cargo in bulk shall be pumped aboard by Merchant as fast as Ship can receive it and shall be recei port of discharge at Ship's hose connections or Ship's rail as fast as Vessel can deliver it.

12. Lighterage. At ports and places of discharge where by local law, local authorities or local custom required to discharge cargo to lighters or other craft or where it has been so agreed, or where piers or wharve available which Ship can reach, lie at or depart from always afloat, or where prevailing conditions at the t discharge to a pier or wharf dangerous or imprudent or would subject Vessel, Goods and cargo of others to abnor Merchant shall be required to furnish lighters or other craft and take delivery alongside Vessel in such lighte from Ship's tackle at the risk and expense of Goods. In such cases, if Merchant fails or refuses to provide other craft, Carrier, acting as agent for Merchant, may engage such lighters or craft for the risk and account and upon discharge of Goods into such lighters or craft, performance hereunder and delivery of Goods shall be and Carrier shall not be under any further responsibility with respect to Goods.

13. Unidentifiable Goods. Carrier shall not be liable for failure to deliver in accordance with leading ma the goods shall have been marked as herein required and the marks shall be clearly legible at the port of tran or discharge. Goods that cannot be identified as to marks or numbers, cargo sweepings, liquid residue and any Goods not otherwise accounted for, shall be allocated to the various Merchants of goods of like character in pr any apparent shortage, loss of weight or damage and shall be accepted as good delivery. Loss or damage t bulk stowed without separation from other goods in bulk of like quality, either of the same Merchant or other shall be divided in proportion among the several shipments.

14. Cooperage, Fines, Expenses etc. Goods shall be liable and shall indemnify Carrier for all expense o cooperage, baling, reconditioning, gathering of loose cargo or contents of Packages; for any payment, fine, tax or impost, loss, damage, detention, costs and expenses of whatever nature sustained or incurred by or l Carrier or Ship in connection with Goods or by reason of Goods being on board, or of any proceeding against o Goods by way of attachment, seizure, interpleader or in any way whatever.

15. Package Limitation. If the actual value of any package, piece or customary freight unit of cargo when as piece or package, exceeds $500., the actual value shall be declared by Merchant in writing before shipm serted in this Bill of Lading and extra freight paid thereon if required; if that is not done the value of such Goo deemed to be $500., per Package, piece or customary freight unit; if the value is $500. or less, the Carrier's any, shall be limited to the invoice value of the goods as hereinafter defined, on which basis the rate of fre justed, but in no event shall Carrier's liability exceed the market value at port of discharge. Any partial loss shall be computed pro rata on the basis of the applicable value.

16. Freight. Freight shall be payable at Carrier's option on gross intake or discharged weight or measur the basis of value or per Package. Freight may be calculated in the first instance on the particulars of Goods f Merchant, but Carrier may, at any time, examine, weigh, measure and value Goods. If Merchant's particulars a be erroneous and additional freight is payable, Goods shall be liable for expenses incurred in examining measuring and valuing them. Full freight to port of discharge named herein shall be considered completei receipt of Goods by Carrier, whether the freight be stated or intended to be prepaid or to be collected at desti Carrier shall be entitled absolutely to all charges due hereunder, whether actually paid or not, and to receive them under all circumstances whatever, Ship and/or cargo lost or not lost, or the voyage changed, broken up or abandoned, or Goods be short, slack or damaged. If there shall be a forced interruption or abandonment of at the port of shipment or elsewhere, any forwarding of any part of Goods, even if by another ship of Carrier, the risk and expense of Goods. All charges involving payment of money shall be due and payable day by day when they are incurred, and shall be paid in full without any offset, counterclaim or deduction, but without any claim against Carrier for breach of contract hereunder. All payments shall be made at Carrier's option in the port of shipment or of the port of discharge at the current demand rate of New York exchange as quoted Ship arrives off Quarantine Station at the port of discharge. Carrier shall have a lien on the cargo, which sh delivery, for all freight and other charges due hereunder and may enforce this lien by public or private sale notice. The proceeds of sale shall be applied so far as they may go towards settlement of Carrier's freigh charges and Carrier shall not be under any liability for consequences thereof, except to account for the bala of such proceeds.

Any person, firm or corporation engaged by Merchant performing forwarding, brokerage or similar servi spect to Goods shall be considered the exclusive agent of Merchant for all purposes and any payment of fre person, firm or corporation shall not be considered payment to Carrier in any event. Failure of such pe corporation to pay any part of the freight to Carrier shall be considered a default by Merchant in the paymen Merchant shall be liable for return freight and charges on goods refused exportation or importation by any g public authorities and Carrier accepts no responsibility therefor.

17. Fire Exemption. Neither Carrier nor any corporation owned by, subsidiary to or associated or af Carrier, shall be liable to answer for or make good any loss or damage to Goods occurring at any time and before loading or after discharge from Ship by reason or by means of any fire whatever, wherever and howeve unless such fire shall have been caused by the actual fault or privity of Carrier or of such corporation, resp any situation where such exemption from liability may not be permitted by law, neither Carrier nor such corpo be liable for any loss or damage by fire unless caused by negligence, including that imputed by law, for whi such corporation is liable respectively.

18. Transhipment. Whenever Goods are consigned to a point where Ship does not expect to discharge, Carrier may consider it advisable, Carrier, without notice, may forward the whole or any part of Goods be loading at the original port of shipment or at any other place whatever, even though outside the scope of t the route to or beyond the port of discharge or the destination of Goods, by any ship or by other means of tr by water or by land, or by air, or by all such means, whether operated by Carrier or by others and whether arriving before or after Ship. Carrier, in making arrangements for transhipping or forwarding by any means o tion not operated by Carrier, shall be considered solely the forwarding agent of Merchant and without any oth bility whatever. All transhipment or forwarding shall be subject to all the terms whatever in the regular f lading, freight note, contract or other shipping document used at the time by the carrier carrying on the tra issued for Goods or not and even though such terms may be less favorable to Merchant than the terms o lading or in any respect whatever, and may exempt the on-carrier from liability for negligence. Merchant sh to Carrier for any increase in freight charges of the transhipping or forwarding carrier made after the issu bill of lading. Pending or during transhipment or forwarding Goods may be stored ashore or afloat at their pense and Carrier shall not be liable in any capacity or in any circumstances whatever for detention or any ever with respect to Goods arising after discharge of Goods from Ship at the port of transhipment.

19. Precious Goods. Gold, silver, specie, bullion or other valuables, including those named or described of the Revised Statutes of the United States, will not be received by Carrier unless their true character disclosed to Carrier and a special written agreement therefor has been made in advance, and will not, in loaded or landed by Carrier. No such valuables shall be considered received by or delivered to Carrier aboard Ship by Merchant and there put in the actual possession of, and a written receipt therefor is given other officer in charge. Such valuables will only be delivered by Carrier aboard Ship on presentation of b properly endorsed, and upon such delivery on board, Carrier's responsibility shall cease. If delivery is not t after Ship's arrival at the port of discharge, such goods may be retained aboard or landed or carried on, risk and expense of the goods.

20. Optional Ports of Discharge. If Goods are shipped with an option for one of several ports of dest chant must give the agents at the first port of discharge notice of the exercise of the option, together wit bill of lading, 48 hours before arrival at the first port of call. If this is not done, Master may discharge Good of the ports covered by the option.

21. Notice and Suit Time. Any claim against Carrier for any loss, damage, delay or non-delivery of any adjustment, refund of or with respect to freight, charges, expenses, tariff classification, or otherwise i with Goods shall be given to Carrier or its agent in writing before removal of Goods from Carrier's custody; o non-delivery, within 30 days after the date when Goods should have been delivered. If written claim is not g shall be considered prejudiced thereby and Carrier shall be discharged of all liability therefor which disc pleaded in and constitute a defense of any suit or proceeding that may be brought against Carrier in connec such claims. In any event, Carrier and Ship shall be discharged from all liability, in respect of loss, dama non-delivery of Goods or in respect of freight, charges, expenses, tariff classification or otherwise in co Goods unless suit or appropriate proceeding is brought within one year after delivery of Goods or the date should have been delivered.

22. Signing, Surrender and Separability. All the terms of this bill of lading, whether written, typed printed are agreed by Merchant to be binding as fully as if this bill of lading were signed by Merchant, any lo law or usages to the contrary notwithstanding. All its terms shall be separable and if any part of any provis or unenforceable such circumstance shall not affect the validity or enforceability of other part or term here lading signed by or on behalf of Carrier or Master, duly endorsed, will be surrendered if required to the agent port of discharge in exchange for delivery order.

23. The headings of the above clauses are for convenience of reference only and shall not affect the int the terms of this bill of lading.

AFFIDAVIT OF RAYMOND S. JACKSON, JR. IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RAYMOND S. JACKSON, JR., being duly sworn, deposes that he is an associate in the firm of Thacher, Proffitt & Wood, attorneys for defendants and third-party plaintiffs, and that he is fully familiar with the conduct of this litigation. This affidavit is submitted in opposition to the plaintiff's motion for summary judgment against defendant derrick barge HOWLETT No. 18 and its owner, defendant M. P. Howlett, Inc. or, alternatively, to strike defendants' affirmative defense under the Carriage of Goods by Sea Act, 46 U.S. Code §1300, et seq.

Facts

The facts giving rise to this complicated litigation are best set forth in chronological order. Plaintiff, a Japanese corporation, arranged to ship a revacycle completing machine from the Port of New York to Nagoya, Japan aboard the S.S. STEEL ADMIRAL which was owned by third-party defendant Isthmian Lines, Inc. On April 3, 1970, the machine was delivered by truck into the custody of Isthmian Lines, Inc. at the Erie Basin Terminal in Brooklyn, and third-party defendant States Marine-Isthmian Agency, Inc., the agent for Isthmian Lines, Inc., issued a dock receipt therefor. A copy of the dock receipt is annexed to the moving papers as Exhibit B.

The revacycle machine, which was packaged in one wooden Gleason case, weighed 12 tons and, accordingly, it could be loaded aboard the S.S. STEEL ADMIRAL only with special heavy-lift equipment. Third-party defendant Isthmian Lines had entered into an agreement for the use of derrick barge HOWLETT No. 18, a defendant herein, for that purpose. A copy of the agreement is annexed to the moving papers as Exhibit C. The derrick barge was non-self-propelled and consisted of a crane mounted on a floating platform. The operator of the derrick barge, defendant Edward Witham, received all of his instructions from a dock boss, Charles Lewis, employed by third-party defendant Isthmian Lines.

Late in the afternoon of Friday, April 3, 1970, the Gleason case containing plaintiff's cargo was lifted by the derrick barge's crane and placed without incident on the deck of the derrick barge. Employees of third-party defendant Maher Stevedoring Company, Inc., acting pursuant to a contract with Isthmian Lines, Inc., then secured the case to the barge's deck. The entire operation was supervised by Isthmian Lines' dock boss, Charles Lewis. A second Gleason case of equal weight was secured to the barge in exactly the same way by the same persons.

During the loading operation on Friday afternoon, dock boss Charles Lewis told defendant Edward Witham, the operator of derrick barge HOWLETT No. 18, that the barge's crane was scheduled for testing early on the following Monday morning. Witham had no prior knowledge that the test had been scheduled. The remainder of this conversation (as to whether the cargo should remain on deck during the test) is subject to sharp issues of fact. At their respective depositions, Lewis claimed that Witham preferred that the cargo remain on board to "improve stability", while Witham testified that he asked Lewis, from whom he took all his instructions, whether the cargo could remain on deck during the test and that Lewis replied that "it would be all right."

Witham also testified that he had tested the crane with cargo aboard on a prior occasion without any problems. In 18 years as a crane operator he never had cargo fall overboard or even shift on his deck. Charles Lewis admitted at his deposition that Witham "is the best crane operator they got. He is very careful. He doesn't take chances."

The test required the crane to hoist a 66-ton weight

Affidavit of Raymond S. Jackson, Jr.

and rotate the boom a full 360 degrees. In accordance with applicable federal regulations, the test was supervised by an independent surveyor, Eric H. Johanson of third-party defendant International Cargo Gear Bureau, Inc. Mr. Johanson saw the cargo on the deck but did not ask that it be removed. He testified at his deposition that federal regulations did not forbid the presence of cargo and that he recalls nothing unusual about its stowage.

The test weight consisted of a hollow steel cube which could be filled to varying degrees with water. Mr. Johanson testified that he did not weigh the test tank but rather that he calculated its weight on the assumption that it had been filled with fresh water. He further testified that he had no way of knowing whether it in fact contained salt water, that salt water weighs 10% more than fresh water, and that he believed Todd Shipyard to have both fresh and salt water hoses on its premises. He also conceded that if the tank had weighed 72.6 tons rather than the required 66 tons and Mr. Witham were aware of the differential he would have handled his equipment differently during the test.

At about 8:30 a.m. on Monday, April 6, 1970 defendant Witham lifted the test tank whose weight had been calculated by third-party defendant International Cargo Gear Bureau, Inc. and, as he was rotating the boom, the Gleason case which had been secured by third-party defendant Maher Stevedoring Company, Inc. under the direction of third-party defendant Isthmian Lines, Inc. slid off the deck of the derrick barge into the river. The second Gleason case, which weighed the same amount and was handled in the same manner by the same personnel, remained secured to the deck.

Issues of Fact

The foregoing facts, many of which were omitted from the moving papers, demonstrate the existence of many issues of fact which can only be resolved at trial. In accordance with General Rule 9(g) of this court, with which plaintiff did not comply, the issues of fact are herwith set forth seriatum:

> 1. Did third-party defendant Maher Stevedoring Company, Inc. negligently secure plaintiff's cargo to the deck of the derrick barge, especially since the second Gleason case did not fall overboard during the testing of the crane?
>
> 2. Did third-party defendant International Cargo Gear Bureau, Inc. negligently miscalculate the weight of the test tank?
>
> 3. Did third-party defendant Isthmian Lines, Inc. direct, authorize or approve the testing of the crane with plaintiff's cargo on board?

4. Was third-party defendant Isthmian Lines, Inc. otherwise negligent in its supervision of the services performed by Maher Stevedoring Company, Inc?

For the reasons set forth in the accompanying memorandum, these fact issues preclude the granting of summary judgment against the defendants.

WHEREFORE, deponent respectfully requests that plaintiff's motion be in all respects denied.

Raymond S. Jackson, Jr.

Sworn to before me this

5th day of October, 1973

RAYMOND H. HUGHES
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1975

OPINION OF DUFFY, U.S.D.J.

#40065

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
Nov 29 8 43 AM '73

ATAKA & CO., LTD.,

Plaintiff,

-against-

DERRICK BARGE HOWLETT NO. 18,
its engines, boilers, etc.,
M. P. HOWLETT INC., and EDWARD WITHAM,

Defendants and
Third-Party
Plaintiffs,

-against-

ISTHMIAN LINES, INC., STATES MARINE-
ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC., and
INTERNATIONAL CARGO GEAR BUREAU, INC.,

Third-Party
Defendants,

- and -

THE HOME INSURANCE COMPANY,

Third Party
Defendant and
Fourth Party
Plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Fourth Party
Defendant.

OPINION

71 Civ. 1503 KTD

APPEARANCES:

HILL, RIVKINS, McGOWAN & CAREY, ESQS.
Attorneys for Plaintiff
By Martin B. Mulroy, Esq.
Of Counsel

THACHER, PROFFITT & WOOD, ESQS.
Attorneys for Defendants
By Edward C. Kalaidjian, Esq.
Raymond S. Jackson, Jr., Esq.
Of Counsel

KEVIN THOMAS DUFFY, D.J.

The plaintiff has moved for summary judgment or alternatively to strike defendants' COGSA*/ defenses.

The facts are fairly straightforward. The plaintiff consigned a case of machinery to one of the third-party defendants, States Marine-Isthmian Agency, Inc. for shipment to Japan. The case of machinery was loaded on the defendant Derrick Barge Howlett No. 18 owned by the defendant M. P. Howlett, Inc. and operated by the defendant Edward Witham. The loading took place late in the afternoon of Friday, April 3, 1970. Employees of the third-party defendant Maher Stevedoring Company, Inc., acting pursuant to a contract with third-party defendant Isthmian Lines, Inc., secured the box of machinery to the deck of the barge. The entire operation was directly supervised by Isthmian Lines' dock boss, Charles Lewis.

---

*/ Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C.A. § 1300, et seq. That act contains a limitation of liability of $500 per package. 46 U.S.C.A. § 1304.

During or after the loading operation on Friday afternoon, Lewis told the operator of the barge that on the following Monday the barge crane was to be tested. It was decided to leave the plaintiff's case of machinery on the barge during the testing. There is a sharp issue between the defendants and the third-party defendants as to whether this decision was made by the operator of the barge or by the dock boss.

In any event, the barge with the plaintiff's case of machinery was towed to the testing place on the following Monday, and the derrick was used to hoist a test tank into the air. The weight of the test tank caused the barge to roll violently and the plaintiff's case of machinery went overboard during the hoist. This caused the damage complained of in this in rem and in personam action.

Plaintiff claims that the negligence of the defendants is such that the doctrine of res ipsa loquitur applies. The defendants claim that there is a question of fact as to whether the negligence is to be attributed to them or to the third-party defendants. The argument is also made that the bill of lading between the plaintiff and the third-party defendants limits any liability on the part of defendants to the $500 COGSA limit. The latter question is clearly the most difficult to resolve.

When the plaintiff's goods were delivered to the pier the third-party defendant, States Marine-Isthmian Agency, Inc., issued a dock receipt which provided in part:

> "Received . . . for shipment subject to all the terms of the regular form bill of lading of the carrier as now in use . . ."

The bill of lading in paragraph 2 provided that the COGSA limitation would apply and specifically that COGSA:

> "shall apply throughout the entire time that Goods are in Carrier's custody, including periods of Carrier's custody before loading on . . . Vessel."

Paragraph 3 of the bill of lading provides in pertinent part:

> "3. Carrier's Servants, Agents, Stevedores, Contractors, etc. Because Carrier requires persons and companies to assist it in the performance of all work and services undertaken by it in connection with the cargo described herein as well as the cargo of others transported or to be transported by Carrier, it is expressly agreed between the parties hereto that the Master, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees and others used, engaged or employed by Carrier in the performance of the aforesaid work and services of Carrier, shall each be a beneficiary of this contract and shall be entitled to all exemptions and immunities from and limitations of liability which Carrier has under this

> bill of lading, whether written, printed or stamped hereon or incorporated by reference herein, and under the United States Carriage of Goods by Sea Act, 1936, and in entering into the provisions of this Clause, Carrier to the extent of such provisions, does so not only on its own behalf but also as agent and trustee of each of the persons and companies described above, all of whom shall be deemed parties to the contract in or evidenced by this bill of lading."

Plaintiff maintains, however, that this attempt to spread the COGSA limitation is ineffective since the damage occurred at a time when defendants were not "used, engaged or employed by Carrier in the performance of the aforesaid work and services of the Carrier . . . ." While it is clear that the Derrick Barge Howlett No. 18 was chartered by the Carrier, it is also clear that M. P. Howlett, Inc. was responsible for "maintaining in good order the Certificate which has been issued to this crane by the U. S. Department of Labor . . . ." The plaintiff argues that when the damage was done to the cargo, the barge was undergoing the necessary test to maintain this certification, in pursuit of its own interest and not in performance of the bill of lading contract. In any event, plaintiff argues that the spreader of the limitation of liability contained in paragraph 3 of the bill of lading (quoted above) does not include barges and thus cannot apply to the in rem part of this proceeding.

The plaintiff's last argument must clearly fall. While it is true that clauses and contracts limiting liability must be strictly construed (Herd v. Krawill Machinery Corp., 359 U.S. 297 (1959)), the law does not push such strict construction to the point of absurdity. The difference between a ship, a vessel or a barge on the one hand and its owner on the other has long been recognized in admiralty (see e.g., 46 U.S.C. § 183) but there is no basis in fact or in law to adhere to that distinction in the circumstances presented here.

The bill of lading clearly was intended to limit the liability of stevedores and would have to include the devices used by stevedores to load the ship including the barges or lighters carrying goods from the wharf to the ship. It is clear that if the ship had been at dockside and a crane on the dock had been used to attempt to stow the plaintiff's case of machinery then no different rules would apply to an in rem action against the crane than would apply to an in personam action against the stevedore using the crane. The mere fact that the Derrick Barge Howlett No. 18 was a crane afloat does not change the liability rules. This is not to say that the in rem action in this case is improper but clearly it cannot be allowed to provide an ingenious loophole in the limitation of liability.

The plaintiff's arguments concerning the scope of performance of the contract of carriage and whether the test of the crane on the Derrick Barge Howlett No. 18 comes within that contract are also ingenious. For the purposes of this case I hold that the voyage began at least when the plaintiff's case of machinery was loaded on the barge. If the barge had sunk during the weekend then it is clear to me that the limitation of liability would apply. If the crane on the barge had dropped the plaintiff's goods while it was attempting to hoist them onto the ship then clearly also the limitation would apply.

The scope of the voyage is set out in paragraph 4 of the bill of lading contract, which provides in pertinent part:

> "4. Scope of Voyage, Government Orders, Liberties, etc. The voyage may or may not include all usual, scheduled, direct, ordinary or advertised routes or ports whether or not named or disclosed in this bill of lading. At any time and in all situations Vessel may sail with or without pilots and/or tugs, adjust equipment, go on drydock or ways or to repair yards, take on fuel or stores, tow or be towed, assist vessels, save life and property of Carrier or others. * * * * "

The paragraph continues in defining scope of voyage in the broadest possible terms.

Having determined that the voyage began for plaintiff's case of machinery at least when it was placed on the barge, then it follows from the broad definition of the scope of the voyage contained in the bill of lading that the goods were still on the voyage while the barge was having its crane tested. Nor can it be said that the definition of the scope of the voyage is unduly broad. Over the centuries men have fought the seas and the sea has claimed its share of victims and of victories over man. It is for this reason and the vagaries of foreign travel that a ship leaving port must not be bound as a railroad train to a specific route. Deviations in the route must be expected and allowed.

The deviation of the Derrick Barge Howlett No. 18 to the test area instead of going directly to the ship was minor indeed and was allowable within the scope of the voyage.

The plaintiff's motion to strike the COGSA defenses as to limitation of liability must therefore be denied. If the carrier had provided all of the services here through its own employees, barges, lighters, etc., then the plaintiff's recovery would have been limited under the provisions of COGSA. In hiring independent contractors and extending the benefits of the limitation of liability to them, the carrier did not in any way reduce the measure of the cargo owner's recovery. If the cargo owner had been unwilling to risk a loss under these circumstances it had only to declare "the nature and value of the goods" and pay the applicable tariff in accordance with the appropriate section of the Carriage of Goods by Sea Act. See 46 U.S.C.A. § 1304(5) and cf. Berkshire Knitting Mills v. Moore McCormack Lines, Inc. 265 F. Supp. 846 (S.D.N.Y. 1965).

Having thus determined that liability must be limited, I now must determine whether the plaintiff has proved liability and is therefore entitled to partial judgment on that question alone.

The defendants resist the entry of summary judgment not by saying that there is no negligence shown by the facts of this case but by arguing that it is unclear whether the defendants or the third-party defendants should be held liable or whether the liability should be joint and several. In effect the defendants have admitted that plaintiff is entitled to recover but suggest that plaintiff must be denied its recovery until the various tiers of defendants resolve who is to pay and how much. Such a result is unjust and repugnant to this Court.

The defendants were the last to have actual direct control over plaintiff's goods prior to the damage to them. Judgment will enter against them and thereafter they may pursue their third-party claims.

While I am relatively certain that the damage complained of is in excess of the $500 COGSA limitation, the defendants have not so admitted. Unless the parties so stipulate the matter will be referred to a Commissioner to ascertain the amount of damages.

Settle order in accordance with this opinion on seven days notice.

/s/ Kevin Duffy
U. S. D. J.

Dated: New York, New York
November 28, 1973.

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--X

ATAKA & CO., LTD.,

Plaintiff,

-against-

DERRICK BARGE HOWLETT NO. 18,
its engines, boilers, etc.,
M. P. HOWLETT INC., and EDWARD WITHAM,

Defendants and Third-
Party Plaintiffs,

-against-

ISTHMIAN LINES, INC., STATES MARINE-
ISTHMIAN AGENCY, INC., MAHER STEVE-
DORING COMPANY, INC., and
INTERNATIONAL CARGO GEAR BUREAU, INC.,

Third-Party
Defendants,

-and-

THE HOME INSURANCE COMPANY,

Third-Party Defendant
and Fourth-Party
Plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Fourth-Party
Defendant.

--X

Index No.
71 Civ. 1503
(KTD)

PARTIAL SUMMARY
JUDGMENT

Plaintiff having moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment against defendants derrick barge HOWLETT NO. 18 and M. P.

Howlett, Inc. and to strike the first affirmative defense alleged in defendants' answer, and the motion having come on to be heard before the Honorable Kevin Thomas Duffy, United States District Judge, with Messrs. Hill, Rivkins McGowan & Carey, attorneys for plaintiff, having appeared in support thereof and Messrs. Thacher, Proffitt & Wood, attorneys for defendants, having appeared in opposition thereto,

NOW, upon reading and filing the notice of motion dated August 15, 1973, the affidavit of Martin B. Mulroy, sworn to on August 15, 1973 and the exhibits annexed thereto, all submitted in support of the motion, and the affidavit of Raymond S. Jackson, Jr., sworn to on October 5, 1973 submitted in opposition thereto, and, after due deliberation the court having rendered its written opinion dated November 28, 1973 granting the plaintiff's motion for summary judgment and denying plaintiff's motion to strike the first affirmative defense alleged in defendants' answer, and each of the parties to this action having stipulated subsequently that the damage complained of by plaintiff exceeds $500, and the court having found for purposes of Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in the entry of judgment, and upon motion of Messrs. Hill, Rivkins, McGowan & Carey, attorneys for plaintiff, it is

ORDERED, ADJUDGED AND DECREED that plaintiff's motion for summary judgment against defendants derrick barge HOWLETT NO. 18 and M. P. Howlett, Inc. be and it hereby is granted, and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff's motion to strike the first affirmative defense alleged in defendants' answer be and it hereby is denied, and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against derrick barge HOWLETT NO. 18 and M. P. Howlett, Inc., jointly and severally, in the sum of $500, and it is further

ORDERED, ADJUDGED AND DECREED that nothing contained in this order shall prejudice the prosecution by the third- and fourth-party plaintiffs of the third- and fourth-party claims alleged herein and that the court retains jurisdiction over those claims.

Dated: New York, New York
December 28, 1973

/s/ KEVIN THOMAS DUFFY
U.S.D.J.

Judgment Entered
Jan. 15, 1974
RAYMOND F. BURGHARDT
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ATAKA & CO., LTD.,

Plaintiff,

Index No.
71 Civ 1503 KTD

-against-

DERRICK BARGE HOWLETT NO. 18, its engines, boilers, etc., M.P. HOWLETT INC., and EDWARD WITHAM,

NOTICE OF APPEAL

Defendants and 3rd party plaintiffs,

-against-

ISTHMIAN LINES, INC., STATES MARINE-ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC., and INTERNATIONAL CARGO GEAR BUREAU, INC.,

3rd party defendants
-and-

THE HOME INSURANCE COMPANY,

Third-party defendant and Fourth-party plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Fourth-Party Defendant,

- x

SIRS:

PLEASE TAKE NOTICE that ATAKA & CO. LTD., plaintiff herein, appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered herein on

January 15, 1974 (upon the Opinion of the Honorable Kevin Duffy dated November 28, 1973) to the extent that such judgment limits the plaintiff's recovery to the $500.00 package limitation.

Dated: New York, New York

[illegible]

Yours, etc.,

HILL, RIVKINS, CAREY, LOESBERG
& O'BRIEN

BY: ______________________
MARTIN B. MULROY
Office and P. O. Address
96 Fulton Street
New York, New York 10038

TO:

THACHER, PROFFITT & WOOD, Esqs.
Attorneys for Defendants
Office and P. O. Address
40 Wall Street
New York, New York 10005

NOTICE OF CROSS-APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED U.S. District Court
JAN. 24 - 12:49 P.M. - '74
S.D. of N.Y.

---x

ATAKA & CO., LTD.,

Plaintiff,

-against-

DERRICK BARGE HOWLETT NO. 18, its engines, boilers, etc., M. P. HOWLETT INC., and EDWARD WITHAM,

Defendants and Third-Party Plaintiffs,

-against-

ISTHMIAN LINES, INC., STATES MARINE-ISTHMIAN AGENCY, INC., MAHER STEVEDORING COMPANY, INC. and INTERNATIONAL CARGO GEAR BUREAU, INC.,

Third-Party Defendants,

-and-

THE HOME INSURANCE COMPANY,

Third-Party Defendant and Fourth-Party Plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Fourth-Party Defendant.

---x

Index No.
71 Civ. 1503
(KTD)

NOTICE OF
CROSS-APPEAL

SIRS:

PLEASE TAKE NOTICE that defendants Derrick Barge Howlett No. 18 and M. P. Howlett, Inc. hereby cross-appeal to the United States Court of Appeals for the Second Circuit from the judgment entered herein on January 15, 1974 to the

Notice of Cross-Appeal

extent that it grants summary judgment against them for any damages.

Dated: New York, New York
January , 1974

Yours, etc.

THACHER, PROFFITT & WOOD

By ____________________
A Member of the Firm
Attorneys for Defendants
40 Wall Street
New York, New York 10005
483-5800

TO: MESSRS. HILL, RIVKINS, CAREY,
LOESBERG & O'BRIEN
Attorneys for Plaintiff
96 Fulton Street
New York, New York 10038

MESSRS. KIRLIN, CAMPBELL & KEATING
Attorneys for third-party defendants
Isthmian Lines, Inc. and States
Marine-Isthmian Agency, Inc.
120 Broadway
New York, New York 10005

DANIEL J. COUGHLIN, ESQ.
Attorney for third-party defendant
International Cargo Gear Bureau, Inc.
110 William Street
New York, New York

MESSRS. HILL, BETTS & NASH
Attorneys for third-party defendant
Maher Stevedoring Company, Inc.
One World Trade Center
New York, New York

MESSRS. BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for third-party defendant
The Home Insurance Company
99 John Street
New York, New York

Due and timely service of ONE cop~~ies~~y
of the within APPENDIX is hereby
admitted this 10th day of JUNE 1974

Thacher Proffitt & Wood

Attorneys for DEFENDANTS AND THIRD-PARTY PLAINTIFFS-Appellees AND CROSS-Appellants